(14)

No. 84-9

IN THE
Supreme Court of the United States
OCTOBER TERM, 1984

MASSACHUSETTS MUTUAL LIFE INSURANCE COMPANY and CECILIA STEVENSON,
Petitioners,
v.
DORIS RUSSELL,
Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

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BRIEF FOR PETITIONERS

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QUESTION PRESENTED

Whether, under the Employee Retirement Income Security Act, a fiduciary to an employee benefit plan may be held personally liable to a plan participant or beneficiary for punitive damages or extra-contractual compensatory relief for improper or untimely processing of benefit claims?

PARTIES TO THE PROCEEDING

Massachusetts Mutual Life Insurance Company *

Cecilia Stevenson

Doris Russell

* The following are non-wholly owned subsidiaries of the Massachusetts Mutual Life Insurance Company as well as companies that may be deemed affiliates thereof:

MML Blend Investment Company, Inc.
MML Equity Investment Company, Inc.
MML Managed Bond Investment Company, Inc.
MML Money Market Investment Company, Inc.
MassMutual Corporate Investors Inc.
MassMutual Income Investors Inc.
MassMutual Mortgage and Realty Investors
MassMutual Liquid Assets Trust
Maslif One & Co.

TABLE OF CONTENTS

TABLE OF CONTENTS—Continued

TABLE OF AUTHORITIES

TABLE OF AUTHORITIES—Continued

TABLE OF AUTHORITIES—Continued

TABLE OF AUTHORITIES—Continued

TABLE OF AUTHORITIES—Continued

TABLE OF AUTHORITIES—Continued

TABLE OF AUTHORITIES—Continued

TABLE OF AUTHORITIES—Continued

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BRIEF FOR PETITIONERS

OPINIONS BELOW

The opinion of the Court of Appeals is reported at 722 F.2d 482 (9th Cir. 1983) and appears in the Appendix to the Petition for Certiorari ("Pet. App.") at 1a to 25a. The order of the United States District Court for the Central District of California granting petitioners' motion for summary judgment, as well as the findings of fact and conclusions of law issued in connection therewith, are unreported and appear in the Appendix to the Petition for Certiorari at 26a to 32a.

JURISDICTIONAL STATEMENT

The judgment of the Court of Appeals for the Ninth Circuit was entered on December 16, 1983. A timely petition for rehearing and suggestion for rehearing en banc was denied by the Court of Appeals on April 6, 1984. Pet. App. at 34a. A timely petition for a writ of certiorari was filed by petitioners on July 5, 1984, and the petition was granted by Order of this Court dated October 1, 1984. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1254(1) (1982).

STATUTES AND REGULATIONS INVOLVED

This case involves Sections 409, 502 and 503 of the Employee Retirement Income Security Act of 1974 ("ERISA"), as amended, 29 U.S.C. §§ 1109, 1132, and 1133 (1982), and 29 C.F.R. § 2560.503-1 (1983), promulgated under ERISA Section 503. These provisions are reproduced in the Appendix to the Petition for Certiorari at 35a to 48a.

STATEMENT OF THE CASE

Petitioner Massachusetts Mutual Life Insurance Company ("Mass Mutual") sponsors two employee benefit plans which provide disability benefits to eligible employees. The Employee Salary Continuance Plan provides short-term salary continuation payments to employees who are temporarily disabled from employment due to sickness or injury. The Employee Disability Plan provides long-term disability benefits to totally disabled employees who have exhausted their Salary Continuance payments. Both plans are funded from the general assets of the company, and are provided at no cost to employees.[1]

The respondent, Doris Russell ("Russell"), worked in Mass Mutual's Los Angeles office as a group claims examiner until May 1979, when she became incapacitated with a back ailment. Russell notified Mass Mutual of her condition and began receiving benefits under the Employee Salary Continuance Plan. Three months later, when Russell's disability had failed to abate, Mass Mutual's Disability Committee[2] recommended that she be examined by an independent orthopedic surgeon. This surgeon concluded that Russell was not physically disabled from performing her usual occupation and that no permanent disability was anticipated. Based on his report, the Plan discontinued Russell's benefits effective October 17, 1979 and notified her of its decision by letter of the same date. Pet. App. at 49a. This letter further advised Russell of her right to appeal the discontinuance of benefits to the Plan Administrator, to review documents relating to the discontinuance of benefits, and to submit in writing further information and comments pursuant to the Claims Procedure contained in the Salary Continuance Plan. *Id.*; *see* Employee Salary Continuance Plan, J. App. at 16.

By letter dated October 22, 1979, addressed to the Director of Group Claims, rather than the Plan Administrator, Russell disputed the medical basis for her termination and stated that "[f]urther information on this will be forthcoming." Pet. App. at 51a. She also indicated that she "definitely wish[ed] to appeal" the

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[1] Copies of both the Employee Salary Continuance Plan and the Employee Disability Plan are filed with the Department of Labor, as required by ERISA Section 104(a)(1)(B), 29 U.S.C. § 1024(a)(1)(B) (1982), *see* Pet. App. at 27a, and are reproduced in the Joint Appendix ("J. App.") at p. 11 and p. 32.

[2] Mass Mutual's Disability Committee is composed of the company's Chief Medical Officer and four other employees appointed by the Chief Executive Officer. Members of the Disability Committee receive no compensation above their normal salary for serving on the Committee.

termination of benefits and requested additional information regarding the termination. *Id.* The Plan Administrator subsequently notified Russell that he could not "complete a fair examination of the facts" until he received the additional medical information referred to in her October 22, 1979 letter. Pet. App. at 53a. He assured her, however, that he would "give [her] appeal prompt attention upon receipt of that information." *Id.* Such additional medical information was presented to the Plan Administrator by letter dated November 27, 1979, and included a report from Russell's psychiatrist indicating that she was suffering from a psychosomatic disability with physical manifestations rather than an orthopedic illness. Pet. App. at 54a.

The Plan Administrator treated Russell's November 27, 1979 letter as a formal appeal and referred it to the Disability Committee for review. Thereafter, at the Disability Committee's request, Russell was examined by an independent psychiatrist, who concluded that Russell was temporarily disabled due to psychiatric illness in a report dated February 15, 1980. Based on this report, the Disability Committee recommended that Russell's benefits be reinstated retroactively, which recommendation was adopted by the Plan Administrator. Russell was advised of this decision by letter dated March 11, 1980, Pet. App. at 56a, and payment of all benefits was made two days later. Pet. App. at 28a, 57a-58a. Russell subsequently submitted an application for long-term disability benefits which also was approved.[3] Pet. App. at 28a.

Notwithstanding that she had received all plan benefits to which she was entitled, Russell brought this action against petitioners in California Superior Court. Her complaint asserted various state law causes of action, including breach of a duty of good faith and fair dealing, breach of fiduciary duty and intentional and negligent infliction of emotional distress, based on the initial suspension of her benefits. As relief, Russell sought both compensatory damages for economic losses and mental anguish[4] and an award of punitive damages.[5]

[3] In contrast, Russell was unsuccessful in obtaining disability benefits from the Social Security Administration. *See* Deposition of Plaintiff dated February 26, 1981 at 100 (filed C.D. Cal. Aug. 19, 1981).

Petitioners removed the action to the United States District Court for the Central District of California on the ground that Russell's claims related to an ERISA-covered employee benefit plan and thus were governed by federal law. Thereafter, the district court entered summary judgment in petitioners' favor, holding: (a) that ERISA preempted Russell's state law causes of action; and (b) that neither punitive nor compensatory damages was available under ERISA, as a matter of law, in connection with any claim based on the initial termination of her benefits or subsequent review thereof. The court also rejected Russell's contention, raised for the first time in opposition to petitioners' motion, that petitioners had violated ERISA by failing to process her benefits appeal within 120 days, as required by regulations promulgated under ERISA Section 503, 29 U.S.C. § 1133 (1982). *See* 29 C.F.R. § 2560.503-1(h) (1983).

[4] In essence, Russell alleged that the termination of her benefits forced her husband, who also was disabled and without income, to cash out his retirement savings in December, 1979. Moreover, Russell claimed that her psychiatric condition was exacerbated as a result of Mass Mutual's alleged untimely and improper processing of her claim and, accordingly, sought damages for mental and emotional distress.

[5] Russell's complaint also included a claim for wrongful discharge under state law which was asserted against both Mass Mutual and Cecilia Stevenson, Russell's supervisor at the company. That claim is not at issue in this proceeding.

Pet. App. at 29a. In this respect, the court specifically held that a decision had been "timely rendered," apparently agreeing that Russell's appeal had commenced upon receipt of her November 27, 1979 letter, thus bringing petitioners' disposition of that appeal on March 11, 1980 well within the 120-day limit.

On appeal, the Ninth Circuit affirmed the district court's ruling that ERISA preempted Russell's state law causes of action. Pet. App. at 8a. It further ruled, however, that ERISA affords plan participants, like Russell, an implied cause of action for breach of fiduciary duty based upon alleged improper or untimely processing of benefit claims. Pet. App. at 10a. In this regard, the Court of Appeals peremptorily rejected the district court's finding that Russell's appeal had been processed in a timely manner. Rather, the Court ruled that respondent's appeal had commenced upon receipt of her initial letter of October 22, 1979, thus placing the final determination approximately twelve days beyond the 120-day limit. Pet. App. at 11a-12a. Although the regulations governing the processing of benefit claims under ERISA indicate only that a "claim shall be deemed denied" if not resolved within this 120 day period, 29 C.F.R. § 2560.503-1(h)(4), the Ninth Circuit ruled that this twelve-day delay constituted a breach of fiduciary duty under ERISA.

The Court further concluded that this "untimely" decision could support both an award of extra-contractual compensatory damages, including relief for mental or emotional distress, and, where the fiduciary acted with "actual malice or wanton indifference to the rights of participants or beneficiaries," an award of punitive damages. In so holding, the Court relied entirely upon language in ERISA Section 409, which subjects fiduciaries to, among other things, "such other equitable or remedial relief as the Court may deem appropriate." Pet. App. at 13a, 16a. This provision, the

Court found, conferred broad discretion to fashion appropriate punitive and compensatory relief even though: (a) the express terms of Section 409 authorize recovery only on behalf of the plan itself and not individual participants; (b) punitive damages are neither equitable nor remedial in nature, but rather, as the Court of Appeals conceded, are designed to "punish the wrongdoer and deter others from similar misconduct," Pet. App. at 16a; and (c) Congress expressly provided a cause of action to plan participants and beneficiaries in the benefit claims context limited solely to recovery of benefits and enforcement and clarification of rights under the plan, ERISA Section 502(a)(1)(B), 29 U.S.C. § 1132 (a)(1)(B) (1982). On this basis, the Court remanded the case to the district court for further proceedings.

SUMMARY OF ARGUMENT

It is now over four years since Doris Russell received the full benefits to which she was entitled under Mass Mutual's Salary Continuance Plan. Nonetheless, the parties are still embroiled in litigation over whether she is entitled to an additional recovery of punitive or compensatory damages under ERISA based on the manner in which her claim for benefits was processed. In holding that ERISA authorized such remedies, the Ninth Circuit ignored Section 502(a)(1)(B) of the Act which specifically limits plan participants and beneficiaries to the recovery of benefits due under a plan or the enforcement or clarification of their rights to such benefits. Rather, the Ninth Circuit relied on Section 409 of ERISA which subjects fiduciaries to, among other things, appropriate "equitable or remedial relief" for violations of ERISA's fiduciary responsibility provisions. This interpretation is contrary to the plain language of both Section 409 and ERISA in general and finds no support in the statute's legislative history. Moreover, unless reversed, it will have significant and adverse consequences for the administra-

tion of employee benefit plans as well as the federal courts.

ERISA Section 409, on its face, nowhere authorizes an award of punitive damages in the benefits context. Nor does it authorize any relief whatsoever on behalf of individual plan participants or beneficiaries. Rather, by its express terms, Section 409 provides relief only to an employee benefit plan itself for breaches of fiduciary duty which occur in the management or investment of plan assets. Moreover, even apart from these considerations, Section 409's reference to other "equitable or remedial relief" could not support the Ninth Circuit's conclusion unless the common meaning of those terms is completely disregarded. As the courts have recognized with near unanimity, punitive damages are neither remedial nor equitable in nature, but are private fines designed to punish the wrongdoer and deter future misconduct.

Similarly, the Ninth Circuit's ruling finds no basis in ERISA's legislative history. That history not only confirms that Section 409 was designed to provide relief only to employee benefit plans, but, more importantly, makes no mention of punitive damages as a potential remedy. Instead, Section 409 underscores Congress' intention to use equitable, and not legal, means to redress or restrain fiduciary violations. This intent is evident both in the range of equitable remedies identified in the legislative history and in Congress' direction that ERISA be construed in accordance with the law of trusts, an area generally considered within the exclusive province of equity courts. Moreover, any intent on the part of Congress to authorize a punitive damages remedy is further belied by ERISA's comprehensive enforcement provisions, which make extensive use of civil and criminal penalties.

The impact of the Ninth Circuit's ruling upon the administration of the thousands of employee benefit plans in this country can be anticipated to be both significant

and adverse. As a threshold matter, it will frustrate the orderly internal resolution of claims disputes contemplated by ERISA Section 503. If participants may obtain punitive damages based on initial decisions which are corrected in the internal appeals process, Congress' purpose in requiring such procedures—to create a non-adversarial method of claims settlement, and avoid lengthy and expensive litigation—will be largely negated. Lured by the prospect of large punitive damage awards, participants will have little incentive to settle their claims. Similarly, plans themselves may be reluctant to correct their own errors in fear that such action would lay the groundwork for a punitive damages claim. The inevitable consequence of such a breakdown in the internal appeals process will be a dramatic increase in litigation in general, and federal court litigation in particular, since all actions for relief under Section 409 are within the exclusive jurisdiction of the federal courts.

Nor will the adverse impact of the Ninth Circuit's ruling be limited to the claims appeals process. The prospect of potentially crippling personal liability may deter many qualified individuals from serving as fiduciaries, particularly since insurance against punitive damages is unavailable in many jurisdictions. Moreover, rather than face such personal liability, those individuals who do serve may sacrifice the interests of the plan in favor of paying questionable claims for benefits or by settling claims they otherwise would resist. Lastly, because punitive damages awards historically have been based on standards that are ill-defined and unevenly applied, they are incompatible with Congress' desire to establish a "uniform source of law for evaluating fiduciary conduct" in ERISA.

For much the same reasons, this Court also should reverse the Ninth Circuit's ruling that Section 409 authorizes an award of extra-contractual compensatory damages to plan participants and beneficiaries for the improper or untimely processing of a benefit claim. Just

as in the case of punitive damages, neither the plain language of Section 409 nor its legislative history suggests that Congress intended to make individual relief available, much less relief for such matters as pain and suffering or emotional distress Moreover, since the Ninth Circuit's ruling would hold fiduciaries accountable for any consequential harm suffered by a plan participant while his claim was under review, even that which they could not remotely anticipate, it would render meaningless the express limitations on relief set forth in ERISA Section 502(a)(1)(B). Finally, the Ninth Circuit's ruling on this issue poses the same threat to the proper administration of employee benefit plans in the federal courts presented by its punitive damages ruling. For this reason alone, it should be overturned.

ARGUMENT

I. THE CIVIL ENFORCEMENT REMEDIES OF ERISA MAKE NO PROVISION FOR AN AWARD OF PUNITIVE DAMAGES

As this Court has observed, ERISA is a "comprehensive and reticulated statute," *Nachman Corp. v. Pension Benefit Guaranty Corp.*, 446 U.S. 359, 361-62 (1980), enacted after years of careful study and analysis to redress flaws evident in the private retirement system. In drafting ERISA, Congress was "constrained to recognize the voluntary nature of private retirement plans," and the importance of formulating safeguards which would not impede plan growth. *See* H.R. Rep. No. 533, 93d Cong., 1st Sess., *reprinted in* Legislative History of the Employee Retirement Income Security Act of 1974, Public Law No. 93-406, Subcommittee on Labor, Committee on Labor and Public Welfare, United States Senate (April, 1976) ("Legislative History") at 2348. Congress thus sought to "strike an appropriate balance between the interests of employers and labor organizations in maintaining flexibility in the design and operation of their pension programs and the need of the

workers for a level of protection which [would] adequately protect their rights and just expectations." *Id.* at 2356. Congress accomplished this goal by, among other things, establishing uniform standards governing reporting, disclosure and fiduciary responsibility, while at the same time placing reasonable limits on the costs and administrative burdens that employers face in connection with these reforms. *Id.* at 2348. This careful balance of competing interests would be upset if punitive damages awards were made available.

A. The Statutory Language of ERISA Does Not Authorize an Award of Punitive Damages

As this Court has made clear on numerous occasions "the starting point for interpreting a statute is the language of the statute itself." *Consumer Product Safety Commission v. GTE Sylvania, Inc.*, 447 U.S. 102, 108 (1980); *see I.N.S. v. Phinpathya*, 104 S. Ct. 584, 589 (1984); *American Tobacco Co. v. Patterson*, 456 U.S. 63, 68 (1982). Where a statutory provision is "clear and unambiguous on its face," that language generally must be regarded as dispositive. *See Tennessee Valley Authority v. Hill*, 437 U.S. 153, 184 n.29 (1978); *Ex parte Collett*, 337 U.S. 55, 61 (1949); *see also Central Trust Co. v. Official Creditors Committee*, 454 U.S. 354, 359-60 (1982). The decision below represents a sharp departure from this rudimentary principle—ERISA nowhere authorizes a participant or beneficiary to recover punitive damages against fiduciaries for improper or untimely processing of benefit claims.

Section 409 of ERISA, the stated basis for the Ninth Circuit's ruling, sets forth the remedies which can be assessed against ERISA fiduciaries for breach of the fiduciary responsibility provisions of the statute. That provision provides in pertinent part:

> Any person who is a fiduciary with respect to a plan who breaches any of the responsibilities, obligations, or duties imposed upon fiduciaries by this

> subchapter shall be personally liable to make good *to such plan* any losses to the plan resulting from each such breach, and to restore *to such plan* any profits of such fiduciary which have been made through use of assets of the plan by the fiduciary, and shall be subject *to such other* equitable or remedial relief as the court may deem appropriate, including removal of such fiduciary.

29 U.S.C. § 1109(a) (1982) (emphasis added). As is evident, Section 409 does not expressly authorize an award of punitive damages against errant fiduciaries. Nor does it authorize any relief whatsoever on behalf of individual participants or beneficiaries. Rather, by its express terms, Section 409 makes relief available only to plans as a whole for breaches of fiduciary duty in the management or investment of plan assets.

This reading of Section 409 is confirmed by the civil enforcement provisions of the statute. Section 502(a)(2) of ERISA, 29 U.S.C. § 1132(a)(2), authorizes four categories of individuals to file suit "for appropriate relief under section 409": (1) the Secretary of Labor; (2) participants; (3) beneficiaries; or (4) fiduciaries. The common interest shared by each of these parties is the financial soundness and integrity of the plan itself, rather than any particularized injury suffered by a single participant or beneficiary.

In sharp contrast, where Congress intended to extend participants and beneficiaries a cause of action for claims arising from their individual rights under an employee benefit plan, it did so expressly. Section 502(a)(1)(B) authorizes a participant or beneficiary to bring suit:

> to recover benefits due him under the terms of the plan, to enforce his rights under the terms of the plan, or to clarify his rights to future benefits under the terms of the plan.

29 U.S.C. § 1132(a)(1)(B) (1982). In view of the limited remedies expressly set forth in this provision,

the courts have uniformly held, and the Ninth Circuit implicitly conceded,[6] that Section 502(a)(1)(B) does not authorize an award of punitive damages to participants and beneficiaries in connection with a benefits dispute.[7] *See, e.g., Bittner v. Sadoff & Rudoy Industries,* 728 F.2d 820, 825-26 (7th Cir. 1984) (punitive damages not available in action or plan benefits under ERISA Section 502(a)(1)(B)); *Diano v. Central States, Health, Welfare & Pension Funds,* 551 F. Supp. 861 (N.D. Ohio 1982) (same).

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[6] The Ninth Circuit rested its holding solely on Section 409, implicitly recognizing that Section 502(a)(1)(B) could not authorize an award of punitive damages. Indeed, Section 502(a)(1)(B) is nowhere mentioned in the Court's discussion of punitive damages. Likewise, the courts that have approved the availability of punitive damages under ERISA, with rare exceptions, have based their conclusion solely on Section 409, and not on Section 502(a)(1)(B). *See, e.g.,* Eaton v. D'Amato, 581 F. Supp. 743 (D.D.C. 1984); Jiminez v. Pioneer Diecasters, 549 F. Supp. 677 (C.D. Cal. 1982); Bobo v. 1950 Pension Plan, 548 F. Supp. 623 (W.D.N.Y. 1982); Free v. Gilbert Hodgman, Inc., 3 Empl. Ben. Cas. (BNA) 1010 (N.D. Ill. 1982).

[7] Nor does Section 502(a)(3), 29 U.S.C. § 1132(a)(3) (1982), supply the requisite statutory authorization for the punitive damages award approved by the Court of Appeals in this case. That section allows participants, beneficiaries or other fiduciaries to "enjoin any act or practice" found to violate ERISA or the plan, or to obtain "other appropriate equitable relief," and is expressly patterned on Title VII of the Civil Rights Act of 1964. 42 U.S.C. § 2000e-5(g) (1982) (providing Title VII complainants with "any other equitable relief as the Court deems appropriate"). This precise language not only has been held to preclude an award of punitive damages under ERISA, *see* Bell v. Southern Oregon Log Scaling Bureau, 1 Empl. Ben. Cas. (BNA) 1439 (D. Ore. 1976), but also, universally has been interpreted to preclude such relief under Title VII. *See, e.g.,* Walker v. Ford Motor Co., 684 F.2d 1355 (11th Cir. 1982); Shah v. Mt. Zion Hospital & Medical Center, 642 F.2d 268 (9th Cir. 1981); DeGrace v. Rumsfeld, 614 F.2d 796 (1st Cir. 1980); Harrington v. Vandalia-Butler Board of Education, 585 F.2d 192 (6th Cir. 1978), *cert. denied,* 441 U.S. 932 (1979); Richerson v. Jones, 551 F.2d 918 (3d Cir. 1977); Pearson v. Western Electric Co., 542 F.2d 1150 (10th Cir. 1976).

Nor does Section 409's reference to "equitable or remedial relief" afford a basis for punitive damages as the Ninth Circuit found. It is a "fundamental canon of statutory construction that, unless otherwise defined, words will be interpreted as taking their ordinary, contemporary, common meaning." *Summit Valley Industries v. Local 112 United Brotherhood of Carpenters*, 456 U.S. 717, 722 (1982) (quoting *Perrin v. United States*, 444 U.S. 37, 42 (1979)); *Burns v. Alcala*, 420 U.S. 575, 580-81 (1975). As this Court recently explained, "[w]here Congress uses terms that have accumulated settled meaning under either equity or the common law, a Court must infer, unless the statute otherwise dictates, that Congress means to incorporate the established meaning of these terms." *National Labor Relations Board v. Amax Coal Co.*, 453 U.S. 322, 329 (1981). Punitive damages, both by definition and in common experience, have never been treated as remedial or equitable in nature. Rather, they are "private fines levied . . . to punish reprehensible conduct and to deter its future occurrence." [8] *International Brotherhood of Electrical Workers v. Foust*, 442 U.S. 42, 48 (1979) (quoting *Gertz v. Robert Welch, Inc.*, 418 U.S. 323, 350 (1974)); *see City of Newport v. Fact Concerts, Inc.*, 453 U.S. 246, 266-67 (1981); *Smith v. Wade*, 461 U.S. 39, 49 (1983); *Silkwood v. Kerr-McGee Corp.*, 104 S. Ct. 615, 628 (1984) (Blackmun, J., dissenting). Thus, contrary to the Ninth Circuit's ruling, the plain language of Section 409 can provide no basis for a punitive damages award.[9]

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[8] Indeed, notwithstanding the Ninth Circuit's novel construction of the terms "equitable" or "remedial" relief, it concedes that the "primary role of punitive damages is not to compensate the victim of intentional wrongdoing, but to punish the wrongdoer and deter others from similar misconduct." Pet. App. at 16a.

[9] Not surprisingly, the vast majority of courts has concluded, contrary to the Ninth Circuit, that neither Section 409, nor ERISA in general, provides for punitive damages awards. *See, e.g.*, Zittrouer v. UARCO, 582 F. Supp. 1471 (N.D. Ga. 1984) (punitive damages not available under ERISA); Whitaker v. Texaco, Inc., 566 F. Supp. 745 (N.D. Ga. 1983) (punitive damages not available against fiduciary under section 409); Diano v. Central States Health, Welfare & Pension Funds, 551 F. Supp. 861 (N.D. Ohio 1982) (punitive damages not available under ERISA); Calhoun v. Falstaff Brewing Corp., 478 F. Supp. 357 (E.D. Mo. 1979) (same); Hurn v. Retirement Fund Trust of Plumbing Industry, 424 F. Supp. 80 (C.D. Cal. 1976) (same); Sheahan v. Leahy, No. 84-1833C(B) (E.D. Mo. Aug. 23, 1984) (same); UAW v. Federal Forge, Inc., No. G83-330 (W.D. Mich. Apr. 5, 1984) (same); Heine v. Clark Equipment Co., No. 82-C-1286 (N.D. Ill. Dec. 21, 1983) (same); Scheirer v. NMU Pension & Welfare Plan, No. 82 Civ. 5544 (S.D. N.Y. Sept. 15, 1983) (same); Jackson v. Occidental Life Insurance Co., No. C-80-4288 SW (N.D. Cal. Mar. 2, 1981) (same); Ziskind v. Retail Clerks International Association, 3 Empl. Ben. Cas. (BNA) 1012 (E.D. Cal. 1982) (punitive damages not available against fiduciary under section 409); Rogers v. Northern California Retail Clerks Trust Fund, No. C-77-1904 (N.D. Cal. June 8, 1978) (punitive damages not available under ERISA); and Bell v. Southern Oregon Log Scaling Bureau, 1 Empl. Ben. Cas. (BNA) 1439 (D. Ore. 1976) (same). *See also* Bittner v. Sadoff & Rudoy Industries, 728 F.2d at 825-86 (punitive damages not available in action for plan benefits under ERISA Section 502(a)(1)(B)); Dependahl v. Falstaff Brewing Corp., 653 F.2d 1208, 1216 (8th Cir.), *cert. denied*, 454 U.S. 968 (1981) (punitive damages not provided by ERISA) (dictum).

B. The Legislative History of ERISA Likewise Fails to Support an Award of Punitive Damages

The Ninth Circuit's conclusion that Section 409 authorizes punitive relief not only is contrary to the plain language of that provision, but also, finds no support in ERISA's legislative history. Indeed, if anything, the legislative history indicates that the punitive sanctions approved by the Ninth Circuit were never contemplated by Congress as part of ERISA's statutory scheme.

As a preliminary matter, Section 409's legislative history confirms that this provision was designed to provide

relief to employee benefit plans as a whole, and not to individual participants or beneficiaries complaining of improper processing of benefit claims. Congress was primarily concerned with the threat to the financial stability of employee benefit plans posed by fiduciaries who failed to discharge their plan responsibilities in accordance with their fiduciary obligations. *See* S. Rep. No. 383, 93d Cong., 1st Sess., *reprinted in* Legislative History at 1063, 1076. In order to ensure that fiduciaries carried out their duties in a manner that would not jeopardize a plan's income or assets, Congress made clear that fiduciaries would be personally liable *to the plan* for any losses resulting from a breach of duty as well as any personal profits which they derived therefrom. *See, e.g.*, Summary of Major Provisions of S. 4, Williams-Javits Pension Reform Bill, *reprinted in* Legislative History at 201 (fiduciary who breaches trust personally liable for losses resulting from such breach); S. Rep. No. 127, 93d Cong., 1st Sess., *reprinted in* Legislative History at 619 (fiduciary personally liable to reimburse fund for losses resulting from breach and to pay over personal profit realized through use of fund assets); S. Rep. No. 383, 93d Cong., 1st Sess., *reprinted in* Legislative History at 1076, 1100 (same); H. Conf. Rep. No. 1280, 93d Cong., 2d Sess., *reprinted in* Legislative History at 4587 (same). In short, Section 409 was never intended to provide relief to individual participants or beneficiaries, but only the plan itself. *See Zink v. Heiser*, 109 Misc. 2d 354, 438 N.Y.S. 2d 209 (Sup. Ct. 1981) (recovery against fiduciary under Section 409 available only to plan and not to participants or beneficiaries).

Even more significantly, no mention of punitive damages as a potential remedy can be found in ERISA's legislative history, which spans over 15 volumes of material. To the contrary, the numerous Committee reports as well as statements by ERISA's sponsors all indicate that Congress intended to use equitable measures to redress or re-

strain violations of fiduciary duty. *See, e.g.*, S. Rep. No. 383, 93d Cong., 1st Sess., *reprinted in* Legislative History at 1173; Summary of Differences Between Senate Version and House Version of H.R. 2, prepared for House and Senate Conferees, Part Three, Fiduciary and Enforcement (June 12, 1974), *reprinted in* Legislative History at 5251; Introductory Statement of Senator Javits on S. 1557, *reprinted in* Legislative History at 279. Thus, the legislative history refers not only to the imposition of personal liability on plan fiduciaries for breach of trust, but also to other appropriate equitable relief, such as injunctions to prevent violations of fiduciary duty, the imposition of constructive trusts on plan assets where needed to protect the participants and beneficiaries and the removal of fiduciaries.[10] S. Rep. No. 383, 93d Cong., 1st Sess., *reprinted in* Legislative History at 1173-1174. Nowhere in the range of equity-oriented remedies identified by Congress is there even a suggestion of an intent to provide punitive damages.

That the remedies contemplated by Section 409 and, indeed, ERISA as a whole, are equitable in nature, and thus incompatible with punitive damages, is further evidenced by Congress' clear direction that ERISA be construed in accordance with the law of trusts. As the legislative history indicates, "the fiduciary responsibility sec-

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[10] Taking their cue from the legislative history, the Courts have imposed a wide range of equitable remedies under Section 409 including removal of the fiduciary, *see Marshall v. Snyder*, 430 F. Supp. 1224, 1233 (E.D. N.Y. 1977), *aff'd in part and remanded in part*, 572 F.2d 894 (2d Cir. 1978), appointment of independent managers to invest the plan's assets, *see Donovan v. Mazzola*, 2 Empl. Ben. Cas. (BNA) 2115, 2138 (N.D. Cal. 1981), injunctions against, and rescission of transactions violative of the statute, *see Eaves v. Penn*, 587 F.2d 453, 463 (10th Cir. 1978); *Gilliam v. Edwards*, 492 F. Supp. 1255 (D.N.J. 1980), and prohibitions against future transactions between employee benefit plans and fiduciaries found guilty of misconduct, *see Marshall v. Carroll*, 2 Empl. Ben. Cas. (BNA) 2491, 2500 (N.D. Cal. 1980).

tion, in essence, codifies and makes applicable to . . . fiduciaries certain principles developed in the evolution of the law of trusts." S. Rep. No. 533, 93d Cong., 1st Sess. *reprinted in* Legislative History at 2358; *see* S. Rep. No. 127, 93d Cong., 1st Sess., *reprinted in* Legislative History at 615; *Donovan v. Bierwirth*, 680 F.2d 263, 271 (2d Cir.), *cert. denied*, 459 U.S. 1069 (1982); *Eaves v. Penn*, 587 F.2d 453, 457 (10th Cir. 1978). *See also National Labor Relations Board v. Amax Coal Co.*, 453 U.S. 322 (1981) (ERISA codifies traditional fiduciary standards developed under trust laws). Remedies for breach of trust always have been within the exclusive province of equity courts.[11] *See, e.g.*, 3 A.W. Scott, The Law of Trusts § 197, at 1625 (3d ed. 1967); Restatement (Second) of Trusts, § 197 (1959). Punitive damages, however, are not an equitable remedy, but a traditional form of legal relief offered only in courts of law. *See Curtis v. Loether*, 415 U.S. 189, 196 (1974); *Walker v. Ford Motor Co.*, 684 F.2d 1355, 1364 (11th Cir. 1982); *Richerson v. Jones*, 551 F.2d 918, 927 (3d Cir. 1977); *Pearson v. Western Electric Co.*, 542 F.2d 1150, 1152 (10th Cir. 1976). Given its reliance on trust principles in drafting ERISA, Congress could not have intended to include punitive damages among the remedies authorized by ERISA without some affirmative statement to that effect.[12] *See National Labor Relations Board v. Amax Coal Co.*, 453 U.S. at 330.

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[11] Congress' characterization of ERISA's remedies as equitable, and not legal in nature, has led the Courts to conclude with near universality that a jury trial is *not* available to participants seeking relief under the statute. *See, e.g.*, Calamia v. Spivey, 632 F.2d 1235 (5th Cir. 1980); Wardle v. Central States Pension Fund, 627 F.2d 820 (7th Cir. 1980), *cert. denied*, 449 U.S. 1112 (1981); Chastain v. Delta Air Lines, Inc., 496 F. Supp. 979 (N.D. Ga. 1980).

[12] In addition, as Senator Javits, one of the principal sponsors of ERISA, stated in describing the principles to be applied under the fiduciary enforcement provisions: "Fiduciary breaches may be rectified through civil suits only. Criminal penalties for such breaches are inconsistent with the principles established under the common law of trusts." Introductory Statement by Senator Javits on S.

The isolated references in ERISA's legislative history to "the full range of legal and equitable remedies available in both state and federal courts," relied on by the Court below, do not support a contrary conclusion. *See* Pet. App. at 16a. Those statements had their genesis in an earlier version of ERISA which did, in fact, provide a civil action for "legal or equitable" relief to redress breaches of fiduciary duty.[13] The civil enforcement provisions ultimately included in ERISA, however, were far more circumscribed and eliminated all references to "legal relief." As noted earlier, in connection with benefit claims, they limited participants and beneficiaries to a cause of action for benefits due and clarification or enforcement of rights under the plan. *See* ERISA Section 502(a)(1)(B), 29 U.S.C. § 1132(a)(1)(B) (1982). All other ERISA actions could be brought by participants, beneficiaries, the Secretary of Labor, or fiduciaries and, similarly, were limited to injunctive or other forms of equitable relief. *See* Section 502(a)(2), (3), (5), 29 U.S.C. § 1132(a)(2), (3), (5) (1982). Thus, the significance attached to the phrase "legal and equitable

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1557, *reprinted in* Legislative History at 279. Although punitive damages are nominally classified as civil in nature, they resemble criminal sanctions and have been characterized as "quasi-criminal" on more than one occasion. *See* Smith v. Wade, 461 U.S. 30, 59 (1983) (Rehnquist, J., dissenting).

[13] The full text of this provision stated in pertinent part:

> Civil actions for appropriate relief, legal or equitable, to redress or restrain a breach of any responsibility, obligation or duty of a fiduciary . . . may be brought by any participant or beneficiary of any employee benefit plan or fund . . . in any court of competent jurisdiction, State or Federal . . . .

See S. 4, Section 603, 93d Cong., 1st Sess. (Apr. 18, 1973), *reprinted in* Legislative History at 579; *see also* H.R. 2, Section 693, 93d Cong., 2d Sess. (March 4, 1974), *reprinted in* Legislative History at 3816; S. 1179, Section 501(d), 93d Cong., 1st Sess. (Aug. 21, 1973), *reprinted in* Legislative History at 950.

remedies" by the Ninth Circuit is negated by the substantial revisions made in Section 502.[14]

Moreover, a mere reference to "legal relief" is insufficient to provide the unambiguous evidence of Congressional intent necessary to support a punitive damages award. In similar statutes, which espouse essentially remedial objectives, this Court has refused to permit punitive sanctions in the absence of clear Congressional guidance. *See, e.g., International Brotherhood of Electrical Workers v. Foust*, 442 U.S. 42, 52 (1979); *Local 20 Teamsters Union v. Morton*, 377 U.S. 252, 260-61 (1964); *Local 60, United Brotherhood of Carpenters v. NLRB*, 365 U.S. 651, 655 (1961); *Republic Steel Corp. v. NLRB*, 311 U.S. 7, 10-12 (1940); *accord Pressman Unions Fund v. Continental Assurance Co.*, 700 F.2d 889, 892 (2d Cir.), *cert. denied*, 104 S. Ct. 148 (1983) (court will not infer remedy under ERISA without affirmative indication of Congressional intent). Punitive damages, of course, are but one form of "legal relief" and generally are heavily disfavored. *See Smith v. Wade*, 461 U.S. 30, 58 (1983) (Rehnquist, J. dissenting); *Lee v. Southern Home Sites*

[14] The Ninth Circuit's reliance on language in ERISA's Declaration of Policy providing for appropriate "sanctions" under the Act similarly is misplaced. This reference relates to the sanctions which are expressly provided by ERISA, including statutory fines, Section 502(a)(1)(A), (a)(4), (c), 29 U.S.C. § 1132 (a)(1)(A), (a)(4), (c) (1982) and criminal penalties, Sections 502, 511, 29 U.S.C. §§ 1131, 1141 (1982), rather than additional remedies not specifically authorized by statute. Likewise, the Ninth Circuit's contention that only punitive damages could "prevent violations of the Act," is equally unavailing. Far from relying on punitive damages, Congress expressed a preference for injunctive relief in ERISA to assure that such violations do not occur. *See* Joint Explanatory Statement of Committee on Conference, *reprinted in* Legislative History at 5494 (Secretary of Labor Authorized to enjoin act or practice violating ERISA Title I); S. Rep. No. 383, 93d Cong., 1st Sess., *reprinted in* Legislative History at 1173 (injunctions may be granted to prevent breach of fiduciary duty).

Corp., 429 F.2d 290, 294 (5th Cir. 1970); *Wright v. Kaine Realty*, 352 F. Supp. 222, 223 (N.D. Ill. 1972). Thus, without more, a simple reference to "legal relief" in the legislative history falls far short of the unequivocal evidence of Congressional intent which this Court has found essential before an additional remedy, not expressly provided in a statute, may be inferred. *Cf. National Labor Relations Board v. Amax Coal Co.*, 453 U.S. at 330; *Owen v. City of Independence*, 445 U.S. 622, 637 (1980).[15]

C. ERISA's Comprehensive Statutory Scheme Precludes a Finding That Congress Intended to Authorize Punitive Damages Awards

In addition to ERISA's express language and legislative history, the very structure of the Act precludes a finding that Congress intended to make punitive damages available. In a long line of cases, this Court has counselled against implying remedies beyond those expressly provided by Congress. *See, e.g., Middlesex County Sewerage Authority v. National Sea Clammers Association*, 453 U.S. 1 (1981); *Texas Industries, Inc. v. Rad-*

[15] In analogous contexts, the courts similarly have refused to predicate punitive relief solely on the basis of a single reference to legal remedies. Courts construing the Age Discrimination in Employment Act, which provides expressly for "legal or equitable relief" in its civil enforcement provisions, have uniformly rejected efforts to include punitive damages within the range of acceptable remedies. *See, e.g., Pfeiffer v. Essex Wire Corp.*, 682 F.2d 684 (7th Cir.), *cert. denied*, 459 U.S. 1039 (1982); *Dean v. American Security Insurance Co.*, 559 F.2d 1036 (5th Cir. 1977), *cert. denied*, 434 U.S. 1066 (1978). In each of these cases, the court looked beyond the phrase "legal relief" to the statutory context, policies and enforcement framework embodied in the Act, and concluded that no intent to authorize recovery of such extraordinary sanctions could be ascertained. If punitive relief is not appropriate under the ADEA, which is similar in both structure and purpose to ERISA, a fortiorari, it cannot be appropriate under ERISA, which makes no express provision for legal relief.

cliff Materials, Inc., 451 U.S. 630 (1981); *California v. Sierra Club*, 451 U.S. 287 (1981); *Northwest Airlines v. Transport Workers Union*, 451 U.S. 77 (1981); *Transamerica Mortgage Advisors, Inc. v. Lewis*, 444 U.S. 11 (1979). As the Court noted in *Transamerica Mortgage Advisors*, "where a statute expressly provides a particular remedy or remedies, a court must be chary of reading others into it." 444 U.S. at 19. *See also Touche Ross & Co. v. Redington*, 442 U.S. 560, 568 (1979). Moreover, "[t]he presumption that a remedy was deliberately omitted from a statute is strongest when Congress has enacted a comprehensive legislative scheme including an integrated system of procedures for enforcement." *Northwest Airlines, Inc. v. Transport Workers Union*, 451 U.S. at 97. The Ninth Circuit's approval of punitive damages awards under ERISA squarely contravenes these teachings.

ERISA not only contains unusually detailed and elaborate enforcement provisions, but also makes extensive use of penal and criminal relief to accomplish its objectives. In addition to the equitable remedies described earlier, participants and beneficiaries may file suit to enforce the disclosure and reporting provisions of the Act, and, in appropriate cases, may be awarded penalties of $100 a day against administrators who fail to comply with a proper request for information. *See* ERISA Section 502(a)(1)(A), (a)(4), (c); 29 U.S.C. § 1131(a)(1)(A), (a)(4), (c) (1982). Similarly, fiduciaries who engage in prohibited transactions under ERISA Section 406 may be liable for a civil penalty equal to five percent of the amount involved in the transaction, and, if left uncorrected, one-hundred percent of that amount. ERISA Section 406, 29 U.S.C. § 1106 (1982); Internal Revenue Code Section 4975 (1982). Employers who fail to make contributions to multiemployer plans may be liable for principal and interest on the unpaid contributions as well as an award of liquidated damages and mandatory attorneys' fees. ERISA Section 502(g)(2)(C), 29 U.S.C.

§ 1132(g)(2)(C) (1982). Finally, the Act provides criminal penalties for willful violations of certain ERISA provisions. Under Section 501, imprisonment and fines up to $100,000 may be imposed for violations of the reporting and disclosure provisions of the Act. 29 U.S.C. § 1131 (1982). Similarly, Section 511 imposes imprisonment and fines up to $10,000 upon individuals who willfully interfere with a beneficiary's exercise of rights under ERISA. 29 U.S.C. § 1141 (1982).

These provisions make clear that when Congress desired to provide punitive-type remedies in ERISA, it did so expressly and without hesitation. In view of these elaborate enforcement provisions, it is highly improbable that Congress "absentmindedly forgot to mention an intended private action" allowing for punitive relief. *See Transamerica Mortgage Advisors, Inc. v. Lewis*, 444 U.S. at 20. Indeed, as the Eighth Circuit noted in rejecting punitive damages under ERISA in a similar context: "[i]f Congress had desired to provide for punitive damages it could have easily so stated, as it has in other Acts." [16] *Dependahl v. Falstaff Brewing Corp.*, 653 F.2d

[16] Congress has expressly provided for punitive damages in a wide variety of statutes. *See* Financial Institutions Regulatory and Interest Rate Control Act of 1978 § 1117(a), 12 U.S.C. § 3417 (1982); Securities Exchange Act of 1934 § 21, 15 U.S.C. § 78u(h) (1982); Jewelers Liability Act § 5(c), 15 U.S.C. § 298(c) (1982); Consumer Credit Protection Act §§ 616, 706, 15 U.S.C. §§ 1681n, 1691e(h) (1982); Omnibus Crime Control and Safe Streets Act of 1968 § 802, 18 U.S.C. § 2520 (1982); Tax Equity and Fiscal Responsibility Act of 1982 § 357(a)(c), 26 U.S.C. § 7431(c) (1982); Deepwater Port Act of 1974 § 15(c), 33 U.S.C. § 1514(c) (1982); Civil Rights Act of 1968 § 812(c), 42 U.S.C. § 3612(c) (1982); Comprehensive Environmental Response, Compensation, and Liability Act of 1980 § 107(c)(3), 42 U.S.C. § 9607(c)(3) (1982); Railroad Revitalization and Regulatory Reform Act of 1976 § 511(j), 45 U.S.C. § 831(j) (1982); Natural Gas Pipeline Safety Act of 1968 § 12(a), 49 U.S.C. § 1679(a) (1982); Transportation Safety Act of 1974 § 111(a), 49 U.S.C. § 1810(a) (1982); Pipeline Safety Act of 1979 § 209(a), 49 U.S.C. § 2008(a) (1982); and Foreign Intelligence

1208, 1216 (8th Cir.), *cert. denied*, 454 U.S. 968 (1981) (dictum); *accord Wilke v. Thiokol*, No. 84-C-1352 (N.D. Ill. June 26, 1984). Congress' failure to so provide demonstrates that it deemed these harsh remedies inappropriate in connection with benefits disputes.

II. THE NINTH CIRCUIT'S DECISION WOULD HAVE AN ADVERSE EFFECT UPON EMPLOYEE BENEFIT PLANS AND THE FEDERAL COURTS

The Department of Labor's most recent studies indicate that in the United States there are approximately 500,000 private pension plans covering over 50 million individuals, and, additionally, an estimated 1.7 million welfare benefit plans sponsored by private employers. *See* U.S. Department of Labor, Labor Management Services Administration, Pension and Welfare Benefits Programs, Estimates of Participants and Financial Characteristics of Private Pension Plans at 1 (1983); 4 Health and Population Study Center, Battelle Human Affairs Research Centers, Employee Welfare Benefit Plans and Plan Sponsors in the Private Nonfarm Sector in the United States, 1978-79 at 24 (1980). Administrators and other fiduciaries to these plans process literally millions of claims for disability, pension and health benefits annually. Unless reversed, the Ninth Circuit's ruling would have a significant adverse impact upon the administration of employee benefit plans in general, and, in particular, upon the manner in which such claims are handled. Moreover, a dramatic increase in federal court litigation over employee benefit claims could be anticipated. These adverse effects far exceed any marginal benefits derived from expanding the remedies available under ERISA to include punitive damages.

Surveillance Act of 1978 § 110, 50 U.S.C. § 1810 (1982). *See also* Clayton Act Section 4, 15 U.S.C. § 15 (1982) (allowing treble damages).

A. Allowing Punitive Damages Awards Would Frustrate the Orderly Internal Resolution of Benefit Disputes

A determination that punitive damages are available under ERISA cannot help but undermine the orderly internal resolution of benefits disputes contemplated by the statute. Under ERISA Section 503, employee benefit plans must establish reasonable claims procedures, providing participants a full, fair and prompt review of any claims initially denied by a plan. ERISA Section 503, 29 U.S.C. § 1133 (1982); 29 C.F.R. § 2560.503-1 (1983). The purpose of such procedures is "to reduce frivolous claims, promote the consistent treatment of claims and create a non-adversarial method of claims settlement." *Taylor v. Bakery & Confectionary Union Welfare Fund*, 455 F. Supp. 816, 820 (E.D.N.C. 1978); *cf. Vaca v. Sipes*, 386 U.S. 171, 191 (1967). In particular, Congress desired to afford both plan participants and plans alike, a quick, effective and largely informal means of resolving their differences, without the need to resort to lengthy and expensive litigation.[17] In recognition of these objectives, the courts generally have required plan participants and beneficiaries, to exhaust the plan's internal review procedure before undertaking litigation.[18] *See, e.g., Kross*

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[17] Although the actual structure of the claims procedure is largely left to the discretion of each plan, the regulations establish certain minimum requirements. Plan participants must be given specific reasons for the denial of a claim, with citations to the pertinent plan provisions on which denial is based, 29 C.F.R. § 2560.503-1 (f)(1), (2) (1983), as well as an opportunity to appeal a denied claim to the appropriate fiduciary, 29 C.F.R. § 2560.503-1(g)(1) (1983). Further, the participant may review pertinent documents and submit issues and comments in writing to the reviewing authority. 29 C.F.R. § 2560.501-1(g)(1)(ii), (ii) (1983). The overall thrust of these provisions is to foster an informal non-adversarial exchange of information, designed to ensure the correctness of final decisions and abate costly and unnecessary litigation.

[18] As the Court has observed on several occasions, the exhaustion requirement presents the most effective means of ensuring that

v. Western Electric Co., 701 F.2d 1238, 1244-45 (7th Cir. 1983); *Amato v. Bernard*, 618 F.2d 559, 567-68 (9th Cir. 1980); *Weeks v. Coca-Cola Bottling Co.*, 491 F. Supp. 1312, 1314 (E.D. Ark. 1980); *Scneider v. United States Steel Corp.*, 486 F. Supp. 211, 213 (W.D. Pa. 1980); *Lucas v. Warner & Swasey Co.*, 475 F. Supp. 1071, 1074 (E.D. Pa. 1979); *Taylor v. Bakery & Confectionary Union Welfare Fund*, 455 F. Supp. at 819-20.

If participants could resort to litigation despite the proper functioning of these internal appeals procedures, the benefits of internal review largely would be negated. No benefits dispute could be resolved internally since the prospect of litigation over punitive damages would remain even where the plan reversed an initial decision and awarded the participant all benefits to which he was entitled. Thus, one of the primary goals of internal review—the avoidance of unnecessary litigation—would be frustrated. Moreover, the availability of punitive damages would serve as a substantial disincentive to plans to remedy their own errors in the internal appeals process. Faced with the prospect of punitive damages litigation, plan fiduciaries might be reluctant to correct initial mistakes in fear that such actions may lay the ground work for a punitive damages claim. Accordingly, rather than encouraging internal resolution of disputes, punitive damages would encourage the costly and time-consuming litigation that Congress hoped to avoid in requiring employee benefit plans to establish claims review procedures.[19]

administrative bodies have ample opportunity to correct their own errors, and thereby moot judicial controversies. *See* Weinberger v. Salfi, 422 U.S. 749, 765 (1975); Parisi v. Davidson, 405 U.S. 34, 37 (1972); McGee v. United States, 402 U.S. 479, 484 (1971); McKart v. United States, 395 U.S. 185, 195 (1969).

[19] As the court noted in *Taylor v. Bakery & Confectionary Union*:

> Tied to these inter-fund claims procedures was Congress' awareness of the potential costs of pension reform, and it sought to "strike a balance between providing meaningful reform and keeping costs within reasonable limits." Congress

Indeed, the Court need look only to this case to witness the harm in making punitive damages available in the benefit claims context. Here, the respondent was advised of the specific grounds for suspending her benefits. She then invoked the plan's claims appeal procedures and brought additional information before the Disability Committee. On the basis of this new data, as well as an independent psychiatric examination, her benefits ultimately were restored retroactively to the date of their discontinuance.

Nevertheless, over four years *after* Russell's benefits were restored in full, the parties are still embroiled in litigation concerning Russell's entitlement to punitive damages arising from the plan's alleged "untimely" resolution of her appeal a mere twelve days beyond the 120-day time limit prescribed by regulation. But for the prospect of a punitive damages award, it is inconceivable that this dispute would not have ended, as Congress intended, with the completion of the internal appeals process. That it has not done so is particularly ironic since the time limit petitioners allegedly violated was designed to insure only that a plan's claim review was not unduly prolonged; indeed, the sole consequence set forth in the regulations for failing to resolve a claim

> was particularly concerned with outlining a private insurance system that would operate efficiently, thereby increasing its acceptance and institution among American business. If claimants were allowed to litigate the validity of their claims before a final trustee decision was rendered, the costs of dispute settlement would increase markedly for employers. Employees would also suffer financially because, rather than utilize a simple procedure which allows them to deal directly with their employer, they would have to employ an attorney and bear the costs of adversary litigation in the courts.

455 F. Supp. at 820 (citations omitted).

within the 120 days is that "the claim shall be deemed denied on review." 29 C.F.R. 2560-503-1(h)(4) (1983).[20]

B. Allowing Punitive Damages Awards Would Inhibit the Exercise of Responsible Decisionmaking, Deter Qualified Individuals from Serving as Fiduciaries and Vastly Increase Federal Court Litigation

Beyond deterring internal resolution of disputes, the availability of punitive damages threatens the proper administration of employee benefit plans in other significant ways. First, punitive damages awards could well disrupt the exercise of responsible decisionmaking on the part of plan fiduciaries. *See International Brotherhood of Electrical Workers v. Foust*, 442 U.S. at 51-52. Confronted with potential awards of "unforseeable magnitude", fiduciaries might feel compelled to process questionable claims or enter into settlements which they ordinarily would resist. *Id.* at 52. As Justice Rehnquist noted in an analogous context:

> their thoughts likely will be on personal financial consequences that may result from their conduct—but whose limits they cannot predict—and not upon their official duties.

Smith v. Wade, 461 U.S. at 88-89 (Rehnquist, J., dissenting). Thus, far from deterring fiduciaries from violating their ERISA responsibilities, the spectre of punitive damages could operate to "chill" desirable conduct, to the detriment of the plan and the remaining participants and beneficiaries. *Id.* at 59.

Moreover, the prospect of such unpredictable personal liability may deter qualified individuals from serving as

[20] As the Eighth Circuit observed in Richardson v. Central States Pension Fund, 2 Empl. Ben. Cas. (BNA) 1477 (8th Cir. 1981):

> [I]f the Trustee fails to comply with the mandatory time limits, the claimant may treat such as a denial for purposes of exhausting his administrative remedy.

Id. at 1480.

fiduciaries to employee benefit plans. By statute, fiduciaries serve voluntarily and generally without compensation from the plan.[21] Because insurance against punitive damages awards is unavailable in many jurisdictions,[22] fiduciaries would be forced to pay such awards out of their personal resources. Exposing fiduciaries to potentially crippling liability, with virtually no offsetting personal benefits, would be a substantial disincentive to many qualified individuals to serve as fiduciaries to employee benefit plans.

[21] ERISA expressly prohibits individuals who are employed by a participating employer, association of employers or employee organization from receiving any compensation from the plan for their additional service as plan fiduciaries. *See* ERISA § 408(c)(2), 29 U.S.C. § 1108(c)(2) (1982). As a result, many individuals receive no compensation beyond their normal salaries for serving as plan fiduciaries. This is especially true of multiemployer plans which are jointly administered by employer and union representatives.

[22] At least 12 states expressly preclude defendants from obtaining insurance reimbursement for punitive damage awards as a matter of public policy. *See, e.g.*, City Products Corp. v. Globe Indemnity Co., 88 Cal. App. 3d 31, 151 Cal. Rptr. 494 (1979) (California); Brown v. Western Casualty & Surety Co., 484 P.2d 1252 (Colo. Ct. App. 1971) (Colorado); American Insurance Co. v. Saulnier, 242 F. Supp. 257 (D. Conn. 1965) (Connecticut); Perez v. Otero, 415 So. 2d 101 (Fla. App. 1982) (Florida); American Surety Co. v. Gold, 375 F.2d 523 (10th Cir. 1966) (Kansas); Norfolk & Western Railway Co. v. Hartford Accident & Indemnity Co., 420 F. Supp. 92 (N.D. Ind. 1976) (Indiana); Crull v. Gleb, 382 S.W.2d 17 (Mo. Ct. App. 1964) (Missouri); City of Newark v. Hartford Accident & Indemnity Co., 134 N.J. Super. Ct., 537, 342 A.2d 513 (1975) (New Jersey); Parker v. Agricultural Insurance Co., 440 N.Y.S.2d 964 (S. Ct. 1981) (New York); Esmond v. Liscio, 224 A.2d 793 (Pa. 1966) (Pennsylvania); Beaver v. County Mutual Insurance Co., 95 Ill. App. 3d 1122, 420 N.E.2d 1058 (1981) (Illinois); Dayton Hudson Corp. v. American Mutual Liability Insurance Co., 621 P.2d 1155 (Okla. 1980) (Okla.); *see also* Wojciak v. Northern Package Corp., 310 N.W.2d 675 (Minn. 1981) (Minn.).

The availability of punitive damages also is sure to inspire a dramatic increase in benefit litigation, which would further tax the financial resources of plans and sponsoring employers alike. Lured by the prospect of large punitive damages awards, participants and beneficiaries would be encouraged to litigate the most frivolous of claims, or, at the least, to embark on renewed efforts to extract favorable settlements from fiduciaries fearful of the risks of heavy financial penalties. *See International Brotherhood of Electrical Workers v. Foust*, 442 U.S. at 52; *Smith v. Wade*, 461 U.S. at 59. Moreover, this increase in litigation is hardly speculative. As amici curae have pointed out, participants and beneficiaries in the Ninth Circuit have already begun to file claims for extra-contractual compensatory and punitive damages arising from benefit disputes in reliance on the decision below.[23] *See* Brief of Amici Curiae Pipe Trust, *et al*, filed in support of Petition for Writ of Certiorari, at 8. The costs of defending these suits inevitably will be borne in the first instance, not by fiduciaries, but by the plans themselves, and ultimately their participants and beneficiaries, in contravention of ERISA's goal of protecting the financial integrity of employee benefit plans. *See* ERISA Section 2(a), 29 U.S.C. § 1001(a) (1982).

Moreover, the burdens of this increased litigation will fall principally on the federal courts. Under ERISA Section 502(e)(1), 29 U.S.C. § 1132(e)(1) (1982), state and federal courts share concurrent jurisdiction over benefit actions brought by participants and beneficiaries under Section 502(a)(1)(B). Actions for relief under

[23] Indeed in the aftermath of the *Russell* opinion, attorneys specializing in civil litigation quickly began to predict that the Ninth Circuit ruling would "encourage" participants or beneficiaries who had "similar claims under ERISA" to file suit for punitive relief. *See* Posner, "Tips on Torts: Some New Relief for Victims of Mishandled ERISA-Benefits Claims," Los Angeles Daily Journal at 4 (July 20, 1984).

section 409—the statutory predicate for punitive damages established by the Ninth Circuit—and, indeed, all other ERISA actions are committed by section 502(e)(1) to the *exclusive* jurisdiction of the federal courts. Because punitive damages may not be awarded under section 502(a)(1)(B), *see Bittner v. Sadoff & Rudoy Industries*, 728 F.2d 820, 825-26 (7th Cir. 1984), the inevitable consequence of the Ninth Circuit's decision will be the joinder of claims for punitive damages under Section 409 in even the most routine benefits cases, thereby insuring that all such actions are litigated in federal courts. This displacement of state court jurisdiction not only is contrary to Congress' design in fashioning ERISA's enforcement and jurisdictional provisions, but also will further strain limited federal judicial resources which might be used more efficiently in other matters. *See Smith v. Wade*, 461 U.S. at 93-94 (O'Connor, J., dissenting).

Faced with similar consequences, this Court has refused to permit punitive relief in other contexts. In *International Brotherhood of Electrical Workers v. Foust*, *supra*, the Court held that punitive damages were not available against unions for a breach of the duty of fair representation under the Railway Labor Act. Noting that awards of punitive damages could well unsettle the careful balance of individual and collective interests underlying unfair representation suits, the Court declined to find this "extraordinary sanction" necessary to vindicate the employee. 442 U.S. at 52.

In much the same fashion, subjecting fiduciaries to punitive damages awards would unsettle the delicate balance of costs and protections reflected in ERISA. As Congress was careful to observe, while ERISA was designed to protect individual pension rights, "the relative improvements required by the Act [must be] weighed against the additional burdens to be placed on the system." *See* H.R. Rep. No. 533, 93d Cong., 1st Sess., *re-*

printed in Legislative History at 2348. Throughout its deliberations, Congress "was acutely aware that under our voluntary pension system the cost of financing pension plans is an important factor in determining whether a pension plan will be adopted." 102 Cong. Rec. S. 15762 (daily ed. Aug. 22, 1974) (Statement of Senator Nelson). Moreover, Congress realized that plans would neither be established nor expanded if the costs to employers were made overly burdensome. 102 Cong. Rec. S. 15735-54 (daily ed. Aug. 22, 1974) (Statement of Senator Long). Confronted with the prospect of substantial unpredictable punitive damages awards, employers would be reluctant to establish employee benefit plans or to expand existing programs for fear of the resulting litigation that could ensue. The Ninth Circuit ruling thus could create the very economic disincentives which Congress hoped to avoid in its comprehensive statutory scheme.

C. The Ninth Circuit's Ruling Would Result in Arbitrary, Inconsistent and Unpredictable Awards

In enacting ERISA, Congress replaced the conflicting system of state and local regulation of employee benefit plans with "a uniform source of law for evaluating fiduciary conduct". *See* Introductory Statement of Senator Javits on S. 1557, *reprinted in* Legislative History at 279; *Shaw v. Delta Air Lines, Inc.*, 103 S. Ct. 2890, 2901 (1983). In so doing, Congress hoped to restore predictability and consistency to the employee benefit area, and, thereby, enable fiduciaries to identify with reasonable certainty conduct deemed unacceptable under the Act.[24]

See H. R. Rep. No. 533, 93d Cong., 2d Sess., *reprinted* in Legislative History at 2359. Injecting punitive damages into this framework would further undermine ERISA's objectives by hampering uniform application of fiduciary principles.

As both courts and commentators have observed, punitive damages awards are becoming increasingly commonplace. *See, e.g., Gertz v. Robert Welch, Inc.*, 418 U.S. 323, 350 (1974); Wheeler, *The Constitutional Case for Reforming Punitive Damages Procedures*, 69 Va. L. Rev. 269, 271 (1983); Long, *Punitive Damages: An Unsettled Doctrine*, 25 Drake L. Rev. 876, 887 (1976). At the same time, such awards have rested on standards which are both ill-defined and unevenly applied. *See Smith v. Wade*, 461 U.S. at 60 (Rehnquist, J., dissenting); Ellis, *Fairness and Efficiency in the Law of Punitive Damages*, 56 S. Cal. L. Rev. 1, 52-53 (1982). Lacking a consistent framework of analysis, the courts have developed a variety of ad hoc tests designee to determine both the entitlement to, and the measure of, punitive relief.[25] *See Smith v. Wade*, 460 U.S. at 60-64 (Rehn-

[24] The legislative history is replete with references to Congress' desire to promote uniformity and consistency in the application of ERISA's fiduciary standards. As Congress observed:

> [A] fiduciary standard embodied in Federal legislation is considered desirable because it will bring a measure of uniformity in an area where decisions under the same set of facts may vary from state to state. . . . [I]t is evident that the operations of employee benefit plans are increasingly interstate. The uniformity of decision which the Act is designed to foster will help administrators, fiduciaries and participants to predict the legality of proposed actions without the necessity of reference to varying state laws.

H. R. Rep. No. 533, 93d Cong., 1st Sess., *reprinted in* Legislative History at 2359. *See also* 102 Cong. Rec. 15742 (daily ed. Aug. 22, 1974) (Statement of Senator Williams) (ERISA substantive and enforcement provisions intended to eliminate threat of conflicting or inconsistent state or local regulation); 102 Cong. Rec. S. 15751 (daily ed. Aug. 22, 1974) (Statement of Senator Javits) (interest of uniformity with respect to interstate plans in ERISA required displacement of all state action).

[25] The standards employed have ranged from "malicious" to "reckless disregard" and varying degrees of negligence. *See* Smith v. Wade, 461 U.S. at 61-62 (Rehnquist, J. dissenting). *See also* Boals v. Gray, 577 F. Supp. 288 (N.D. Ohio 1983) (malicious, wanton or oppressive act sufficient for award of punitive damages); Kann v. Keystone Resources, Inc., 575 F. Supp. 1984 (W.D. Pa.

quist, J., dissenting). The amounts awarded under these standards have been subject to few constraints and, in practice, punitive damages awards have been assessed in "wholly unpredictable amounts bearing no necessary relation to the actual harm caused." *Gertz v. Robert Welch, Inc.*, 418 U.S. at 350; *see International Brotherhood of Electrical Workers v. Foust*, 442 U.S. at 50.[26] Moreover, the arbitrary nature of these standards often fail to provide defendants with fair warning of the consequences of their actions, thus negating the primary purpose of punitive damages awards—the deterrance of conduct which violates federal standards. *See* Long, *Punitive Damages: An Unsettled Doctrine*, 25 Drake L. Rev. at 881.

1983) (act committed with bad motive or with reckless indifference); Lake Havasu Resort, Inc. v. Commercial Loan Ins. Co., 139 Ariz. 369, 678 P.2d 950 (Ariz. Ct. App. 1984) (aggravated, wanton, reckless or malicious conduct); Huggins v. Deinhard, 127 Ariz. 358, 621 P.2d 45 (Ariz. Ct. App. 1980) (outrageous, willful, malicious in fact, done in bad faith or with reckless indifference to rights of others); Boyton v. Lopez, 473 A.2d 375 (D.C. App. 1984) (willful or outrageous conduct or conduct which results in gross fraud); Cheney v. Palos Verdes Inv. Corp., 104 Idaho 897, 665 P.2d 661 (1983) (extreme deviation from reasonable standards of conduct performed by defendant with understanding or disregard for its likely consequences); Pendowski v. Patent Scaffolding Co., 89 Ill. App. 3d. 484, 411 N.E.2d 910 (1980) (intentional conduct or conduct exhibiting a reckless disregard for safety of others or failure to exercise ordinary care in the face of impending danger); Leichtamer v. American Motors Corp., 67 Ohio St. 2d 456, 424 N.E.2d 568 (1981) (flagrant indifference to unreasonable risk of harm); Shortle v. Central Vermont Public Service Corp., 137 Vt. 32, 399 A.2d 517 (1979) (actual malice or reckless or wanton disregard of another's rights).

[26] Indeed, the lack of comprehensive guidelines has raised questions as to whether imposition of punitive damages is consistent with due process. Although punitive damages are "quasi-criminal" in nature, "their imposition is unaccompanied by the types of safeguards present in criminal proceedings." *See* Smith v. Wade, 461 U.S. at 59 (Rehnquist, J., dissenting); Wheeler, *The Constitutional Case for Reforming Punitive Damages Procedures*, 69 Va. L. Rev. 269 (1983).

The detrimental impact of this state of affairs on employee benefit plans is self-evident. In the absence of uniform standards, punitive damages awards are likely to fall unevenly upon fiduciaries, depending upon the jurisdiction in which they reside. Moreover, federal courts may assess punitive damages by reference to state law, further aggravating the uneven impact of such assessments. Finally, even assuming that a single workable standard could be developed, the broad discretion accorded to the trier of fact to set the amount of punitive damages must inevitably lead to inconsistent results, which cannot be squared with Congress' emphasis in ERISA on predictability and uniformity. *See, e.g., International Brotherhood of Electrical Workers v. Foust*, 442 U.S. at 50; *Rosenbloom v. Metromedia, Inc.*, 403 U.S. 29, 82-83 (1971) (Marshall, J., dissenting).

When viewed in this context, the possible benefit of punitive awards pales considerably. Punitive damages, of course, serve no compensatory purpose, but represent mere windfalls to prevailing plaintiffs. *See City of Newport v. Fact Concerts, Inc.*, 453 U.S. 247, 266 (1981); *International Brotherhood of Electrical Workers v. Foust*, 442 U.S. at 50; *Smith v. Wade*, 461 U.S. at 49. As the court below recognized, they are designed to punish reprehensible conduct and to deter its future occurrence. *Silkwood v. Kerr-McGee Corporation*, 104 S. Ct. 615, 628 (1984); *City of Newport v. Fact Concerts, Inc.*, 453 U.S. at 266; *Gertz v. Robert Welch, Inc.*, 418 U.S. at 350.

Such "punishment" of errant fiduciaries, however, is hardly essential to further the policies underlying ERISA. As discussed above, these fiduciaries generally are uncompensated for their services and bear no financial stake in the outcome of benefits disputes. Thus, they have little motive to act other than in the best interest of the participants and beneficiaries of the plans they serve. Moreover, they are already subject to a wide range of statutory and regulatory remedies more than

adequate to deter misconduct on their part. Those remedies, as noted earlier, include personal liability for losses to the plan arising from a breach of fiduciary duty, civil penalties, removal, and imposition of criminal sanctions. *See* pp. 15 to 23, *supra*. Further, in circumstances involving gross misconduct, fiduciaries can be compelled to pay attorneys' fees and costs incurred by participants in benefits cases. *See* ERISA Section 502(g)(1), 29 U.S.C. § 1132(g)(1) (1982). Under these circumstances, whatever marginal benefit there might be in subjecting fiduciaries to liability for punitive damages is too insubstantial to justify the disruption of orderly employee benefit plan administration that would inevitably follow.

III. FOR SIMILAR REASONS, THE COURT SHOULD REVERSE THE NINTH CIRCUIT'S HOLDING ON EXTRA-CONTRACTUAL DAMAGES

For much the same reasons, the Ninth Circuit's holding that extra-contractual compensatory damages are available to plan participants under Section 409 should be reversed. As in the case of punitive damages, this ruling finds no support in the plain language of Section 409 which authorizes relief only on behalf of the plan itself, and not on behalf of plan participants or beneficiaries. Moreover, the legislative history of ERISA nowhere suggests an intent on the part of Congress to provide damages for pain and suffering or other consequential relief arising out of a denial of benefits. Rather, that history evidences an intention to provide solely equitable remedies, in accordance with the law of trusts. *See* pp. 17 to 18, *supra*.

Further, the Ninth Circuit's ruling would produce results that are directly contrary to Congress' statutory scheme. As noted earlier, in ERISA Section 502(a)(1)(B), Congress extended participants and beneficiaries a cause of action based on their individual plan rights under which they could recover any benefits due them under

a plan, or enforce or clarify their rights to such benefits. In view of these express limitations on the types of relief authorized, the courts have held that extra-contractual damages, such as damages for pain and suffering or emotional distress, are not available under Section 502(a)(1)(B). *See Bitner v. Sadoff & Rudoy Industries*, 728 F.2d at 824; *Hurn v. Retirement Fund Trust of Plumbing Industries*, 424 F. Supp. 80 (N.D. Cal. 1976). Nonetheless, under the Ninth Circuit's ruling, such damages would be routinely awarded under Section 409 of ERISA whenever a participant could demonstrate that a plan had failed to use "reasonable care" in processing his claim for benefits. Pet. App. at 12a. Indeed, a participant would be entitled to such recovery even where an initial benefit denial was corrected in the internal appeals process. Such a result not only flies in the face of the express limitations on relief set forth in Section 502(a)(1)(B), but it would render them virtually meaningless.[27]

The Ninth Circuit's decision on extra-contractual relief also would have many of the same adverse effects upon proper plan administration described in connection with punitive damages. Just as in the case of punitive damages, the availability of extra-contractual relief would serve as a disincentive to the internal resolution of benefits claims disputes. Similarly, the prospect of potential personal liability for such matters as pain and suffering

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[27] Likewise, in analogous statutes under Title VII and the Age Discrimination in Employment Act, the courts have refused to allow damages for pain and suffering and other consequential relief. *See, e.g.*, Walker v. Ford Motor Co., 684 F.2d 1355 (11th Cir. 1982); Hensen v. City of Dundee, 682 F.2d 897 (11th Cir. 1982); Padway v. Palches, 665 F.2d 965 (9th Cir. 1982); Shah v. Mt. Zion Hospital and Medical Center, 642 F.2d 268 (9th Cir. 1981); Johnson v. Al-Tech Specialties Steel Corp., 731 F.2d 143 (2d Cir. 1984); Hill v. Spiegel, Inc., 708 F.2d 233 (6th Cir. 1983); Pfeiffer v. Essex Wire Corp., 682 F.2d 684 (7th Cir.), *cert. denied*, 439 U.S. 1039 (1982).

and emotional distress may deter many qualified individuals from serving as ERISA fiduciaries. Indeed, this consequence may be even more severe in connection with extra-contractual damages since the Ninth Circuit's ruling, in effect, would make such relief automatic where a participant suffers consequential harm while his claim was under review.

Lastly, the availability of such relief would have much the same adverse impact on responsible plan decision-making as an award of punitive damages. It would encourage plan fiduciaries to place their own interests in avoiding personal liability above those of the plan when considering claims. Moreover, since fiduciaries would face potential liability for any harm suffered due to delay in resolving a participant's claim—even that inherent in the appeals process—it would encourage fiduciaries to place a premium upon speed at the expense of the thorough, deliberate consideration of benefit claims contemplated by ERISA.

Once again, the Court need look no further than this case for an illustration of these points. Here, respondent is seeking damages for economic loss and emotional distress caused by a benefit claims dispute ultimately resolved in her favor. None of her losses, however, are in any way related to the alleged 12 day delay in resolving her appeal. Russell's alleged economic loss—the cash out of her husband's retirement plan—occurred on December 17, 1979, less than 60 days after Russell's October 22, 1979 letter was received by the plan. Similarly, her alleged "mental and emotional" distress occurred long before the 120 day appeal period had expired. Absent some extraordinary degree of prescience, the fiduciaries to the plan could have no means of foreseeing that respondent faced such peculiar problems. Under the Ninth Circuit's ruling, however, if the initial denial of her benefits claim was in error, these same fiduciaries could be held strictly accountable for any damages which occurred while the appeal of the denial of benefits was under review.

Finally, the same proliferation of litigation in general, and federal court litigation in particular, can be anticipated if the decision below is permitted to stand. Participants and beneficiaries, confronted with the opportunity to recover such consequential damages would have little incentive to resolve their claims short of litigation. Moreover, any participant or beneficiary whose claim for benefits was denied on appeal inevitably would join its action under Section 502(a)(1)(B) with an action under Section 409 seeking such compensatory relief, thus insuring, contrary to Congress' legislative purpose, that all such litigation is brought in federal court.[28] Accordingly, just as the availability of punitive damages under ERISA cannot be sustained, so too the Court should declare extra-contractual damages unavailable as a matter of law.

CONCLUSION

For the foregoing reasons, the ruling of the Ninth Circuit should be reversed.

Respectfully submitted,

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[28] As in the case of punitive damages, claims for extra-contractual damages under § 409 cannot be pursued by a participant or beneficiary in a action pursuant to § 502(a)(1)(B), the *only* type of ERISA action that may be brought in state court. Rather, they must be pursued under ERISA § 502(a)(2) over which the federal courts have exclusive jurisdiction. ERISA § 502(e)(1), 29 U.S.C. § 1132(e)(1) (1982).